IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

J.K.Synthetics Limited Vs. Labour Court Kota & Another
(D.B. Civil Special Appeal No.272/1995)

D. B. Civil Special Appeal under Sec.18 of the Rajasthan High Court Ordinance 1949 against the order dated 21-12-1993 in SB Civil Writ Petition No.1269/1984.

Date of Judgment: January 23, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. N.K. Maloo, for the appellant.

Mr. Sunil Samdaria, for the respondent workman.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Labour Court Kota vide award dated April 23, 1984 answered the reference made to it under section 10(1)(c) of the Industrial Disputes Act,1947 (for short `the Act') in favour of Shri Ram Snehi Chaudhary (for short `workman') holding removal of the workman by J.K. Staple & Toes Kota (for short `employer') was illegal and unjustified and the workman was entitled to be reinstated in the service with continuity and full back wages. The Employer assailed the award by filing writ petition. Learned Single Judge dismissed the writ petition and confirmed the award vide order dated December 21, 1993. Hence this intra court appeal.

2. Contextual facts depict that the workman while working as Helper in Mechanical Department of employer was served with a charge-sheet on November 6, 1980 on the allegation of conspiracy with Shri Ram

Pratap Pandey, Shiv Kant Tiwari and Amar Tiwari to commit theft of brass copper rods from the factory and had taken out these rods out side the sectional store during general shift on November 3, 1980. The workman denied the allegation. Thereafter Subhash Chand Jain was appointed as Inquiry Officer, who conducted domestic inquiry. The employer examined Brij Mohan Rana (Mw.1), Prabhulal (Mw.2), Cap.Ajay Singh (Mw.3), Raghuvir Sahai Pandey (Mw.4) and Banshi Lal (Mw.5) in support of allegations. No oral evidence was tendered by the workman and the Inquiry Officer submitted his report dated June 30, 1981 with the finding that the charge levelled against the workman stood established. On the basis of said report the employer vide order dated September 28, 1981 terminated the services of the workman. On raising dispute the reference was made by the Government to Labour Court under Section 10 (1)(c) of Industrial Disputes Act,1947 (for short `Act'). The workmen filed statement of claim inter alia stating therein that the inquiry held against him was unfair and arbitrary and although the charge was not proved, the Inquiry Officer submitted frivolous findings. The employer however contended that the domestic inquiry was held in accordance with the principles of natural justice. In the additional plea the employer stated that if the inquiry was found unfair, in that event the employer be provided opportunity to produce evidence to substantiate the charge levelled against the workman. On the question of fairness of the inquiry the Labour Court vide order dated December 8, 1993 held that the domestic inquiry was conducted in accordance with the principles of natural justice. Thereafter the Labour Court examined the findings recorded by the Inquiry Officer against the workman and action taken by the employer. The Labour Court considered this part of the order by referring to the provisions of Section 11(A) of the Act and ratio indicated in The Workmen of M/s.

Firestone Tyre & Rubber Co.of India Vs. The Management & Others (AIR 1973 SC 1227) and after a detailed evaluation of the evidence produced during the course of domestic inquiry held that finding recorded by the Inquiry Officer about the guilt of the workman was perverse, therefore the workman could not have been punished with removal from service.

3. Learned counsel for the employer urged before the learned Single Judge that Labour Court had no jurisdiction to go into the merits of the findings recorded by the Inquiry Officer, when it had recorded a finding that domestic inquiry was fair and legal. Labour court ought to have decided the issue of perversity of finding of Inquiry Officer along with the preliminary issue regarding fairness of the inquiry and it should have given an opportunity to employer to lead evidence. Re-appreciation of evidence by Labour Court was unwarranted and so was its conclusion that finding of guilt recorded against the workman suffered from an error apparent on the face of the record. It was also argued that without recording finding regarding gainful employment of workman the award for reinstatement with back wages and other service benefits was illegal.

4. In view of the decision of the Apex Court in Indian Iron & Steel Company Ltd. V. Their Workmen (AIR 1958 SC 130) learned Single Judge held that after insertion of section 11A of the Act (vide notification dated December 15, 1971) the Tribunal or other adjudicating authorities had been vested with wide powers of re-appreciation of the evidence recorded in a domestic inquiry and to record their own conclusion in respect of allegation of misconduct and also to satisfy whether the punishment imposed by the employer was justified or not. Learned Single Judge also observed that it

was not possible to accept the submission made on behalf of employer that the Labour Court exceeded its jurisdiction in holding that the finding recorded by the Inquiry Officer was perverse. Learned Single Judge on the question of perversity of finding recorded by Inquiry Officer considered the evidence and the finding and observed that apparently, the Inquiry Officer thought that burden lay upon the workman to prove his innocence. While doing so the Inquiry Officer had ignored the basic principle which was required to be followed even in domestic inquiry, namely, that the burden to prove the charge was on the employer and that mere failure of the workman to lead evidence in rebuttal, did not lead to a conclusion that the workman was guilty of the charge. By overlooking this principle of law the Inquiry Officer could not but be held to have recorded a finding which was perverse. Regarding reinstatement with back wages, learned Single Judge held that before the Labour Court the employer did not plead that it lost confidence in the workman nor did it plead that the workman was gainfully employed and relying on various decisions of the Apex Court learned Single Judge observed as under:-

> "A conspectus of various decisions of the Supreme Court and of the High Courts shows that rule of reinstatement with back wages in all cases has been treated as an absolute rule. Under ordinary circumstances, the Labour Court or the Tribunal is not left with any option but to in exceptional circumstances departure from the normal rule of reinstatement with back wages has been held to be permissible. In fact departure has been made by the Apex Court as well as various High Courts in the exceptional and special circumstances of particular cases. In Surendra Kumar's case (supra) the Supreme Court has indicated some circumstances where the adjudicating Court may exercise its discretion of denying relief of reinstatement where the reinstatement may become impossible on account of closure of industry or where reinstatement will

be wholly inequitable or the workman may have in a given case secured better employment. The circumstances referred to by the Supreme Court in which relief of reinstatement may be denied, are only illustrative and not exhaustive. There may be some other exceptional situations warranting departure from the rule of reinstatement with back wages..."

Learned Single Judge drew following conclusions:-

(i) Section 11A of the 1947 Act has no application to case of reinstatement of a workman which is covered by S.2(oo) of 1947 Act.
(ii) Once a Labour Court or the Tribunal holds that the retrenchment of a workman has been brought about in violation of S.25F of 1947 Act, ordinarily it must order reinstatement with consequential benefits.
(iii) Departure from the normal rule of reinstatement and consequential benefits can be made in exceptional circumstances. There may be a case of impossibility of reinstatement or there may be a case of closure of industry, better gainful employment of the workman or where the reinstatement may result in violation of any legal or constitutional provisions.
(iv) Heavy burden lies on the employer to specifically plead and also to prove the existence of exceptional circumstances warranting departure from the normal rule of reinstatement and consequential benefits.

Making aforesaid observations, learned Single Judge held that the employer failed to bring out any exceptional circumstance warranting departure from the normal rule of reinstatement with back wages and dismissed the writ petition.

5. Learned counsel for the appellant in assailing the order of learned Single Judge made following submissions:

(i) The Labour Court was required to consider the validity of the domestic inquiry as a preliminary issue and if the management makes a request to grant permission to adduce evidence, if the decision of preliminary issue is against the management, then to give opportunity to adduce evidence before the labour court itself to establish the charge was to be given. When the labour court held that domestic inquiry was in accordance with the principles of natural justice, the finding of the inquiry Officer were proper and not perverse. Thus neither the preliminary issue was decided by the Labour court properly nor opportunity to lead evidence by the employer was given, therefore the Labour Court failed to exercise its jurisdiction in accordance with law and learned Single Judge erred in not appreciating this illegality committed by the Labour Court.

(ii) Learned Single Judge failed to properly consider the judgment of the Apex Court in Ritz Theatre, DCM Vs. Ludh Budh Singh only on the ground that in the instant case the employer did not take the plea that in case domestic inquiry being not found to be valid it should be accorded opportunity to lead evidence to establish the charge.

(iii) In domestic inquiry hearsay evidence was also admissible, therefore evidence of Mw.4 could not have been discarded on the ground that Shiv Kant and Amar Tiwari were not examined by the employer.

(iv) Learned Single Judge did not consider the additional affidavit by which the alternate argument was submitted that the company is facing problem of surplus staff to the extent of 38% and out of total strength of 579, 222 hands were identified as surplus requiring re-deployment. In the Mechanical Maintenance department against existing strength of 46 persons, 15 persons were identified as surplus. Thus reinstatement will be unbearable.

(v) Learned Single Judge did not consider the fact that on date of serving charge sheet to employee he was a probationer only within a period of two months of his service. In case of probationer there is no reinstatement.

(vi) Learned Single Judge also did not consider this aspect of the case that the charge against the employee was of theft only on the ground that the specific plea of loss of confidence was not taken.

(vii) Learned Single Judge has wrongly relied upon the case of Kailash Chand, which pertains to violation of section 25F and any order passed in contravention of Section 25F is treated as null and void. Learned Single Judge overlooked his own observations distinguishing the scope of section 11A vis-a-vis section 2(oo).

(viii) Latest pronouncements of Apex Court are that Tribunal and the Court should not slightly interfere in the findings and

punishment given by the Disciplinary Authority.

(ix) Learned Single Judge has wrongly observed that Inquiry Officer had proceeded with erroneous approach as to the burden of proof.

(x) Learned Single Judge also did not consider alternate plea to award compensation in lieu of reinstatement with back wages, since an amount Rs.1,30,000/- had already been paid to the employee on August 31, 1992.

(xi) The award of the Labour Court is in excess of jurisdiction, learned Single Judge failed to consider this aspect of the case.

6. We have given our thoughtful consideration to the submissions advanced before us and scanned the case law placed for our perusal.

OPPORTUNITY TO LEAD EVIDENCE

7. It is contended by Mr. Maloo, learned counsel for the appellant, that opportunity of leading evidence must have been given to the employer, if the finding in domestic inquiry was held to be perverse. The question as to the inquiry being fair, proper, legal or perverse, had to be decided as preliminary issue. If it was to be decided against the employer, opportunity to lead evidence ought to have been given to the employer. According to learned counsel, the employer in the reply to the claim specifically stated that if the issue of domestic inquiry was decided against employer, opportunity of leading evidence was required to be provided. Thus prayer of

leading evidence was made in the very first instance. No subsequent application for evidence could have been moved because the finding of perversity was not given at the first stage but was given in the award itself. Reliance is placed on Management of Ritz Theatre Delhi Vs. Workmen (AIR 1963 SC 295), wherein Three Judge Bench of Hon'ble Supreme Court indicated thus:- (Para 12)

> "We do not think that this view can be accepted as correct. In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute. It is quite conceivable, and in fact it happens in many cases, that the employer may rely on the enquiry in the first instance and alternatively and without prejudice to his plea that the enquiry is proper and binding, may seek to lead additional evidence. It would, we think, be unfair to hold that merely by adopting such a course, the employer gives up his plea that the enquiry was proper and that the Tribunal should not go into the merits of the dispute for itself. If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence. Instead of following such an elaborate and somewhat cumbersome procedure, if the employer seeks to lead evidence in addition to the evidence adduced at the

> departmental enquiry and the employees are also given an opportunity to lead additional evidence, it would be open to the Tribunal first to consider the preliminary issue and then to proceed to deal with the merits in case the preliminary issue is decided against the employer. That, in our opinion, is the true and correct legal position in this matter."

8. Evidently, the Apex Court in the aforequoted judgment held that the first question which the Tribunal has to consider is whether proper enquiry has been held or not. If this first question is tried as preliminary issue and the finding of preliminary issue is in favour of employer, then no additional evidence need be cited by the employer.

9. In the instant case, as already noticed, the Labour Court decided the question of fairness of the inquiry as preliminary issue and vide order dated December 8, 1993 held that the domestic inquiry had been held in accordance with the principles of natural justice. Since the finding of preliminary issue was in favour of employer, no additional evidence was required to be cited by the employer.

SECTION 11-A OF THE INDUSTRIAL DISPUTES ACT 1947

10. Before section 11-A was inserted in the Act by notification dated December 15, 1971, the jurisdiction of the Tribunal to interfere with the action taken by the employer against the workman was limited as was indicated by the Supreme Court in Indian Iron & Steel Company Vs. Their Workmen (AIR 1958 SC 130). That Industrial Tribunal should not interfere with the action of management in its internal administration and discipline.

The Tribunal cannot act as a Court of Appeal and substitute its own judgment for that of the management. However it will interfere:-

(i) when there is a want of good faith; or
(ii) when there is victimization of unfair labour practice; or
(iii) when the management is guilty of basic error or violation of principles of natural justice; or
(iv) when on the materials the finding is completely baseless or perverse.

Keeping in view the law laid down by the Supreme Court, it appears, Section 11-A was inserted in the Act. In workmen of M/s. Fire stone tyre and Rubber Co. Vs. Management (AIR 1973 Sc 1227) the ambit and scope of Section 11-A was analysed. The Apex Court indicated that Section 11-A has the effect of altering the law by abridging the rights of the employer in as much as it gives power to the Tribunal for the first time to differ both on the finding of misconduct arrived at by the employer as well as the punishment imposed by him. The Apex Court recognised the jurisdiction of the Tribunal to re-appreciate the evidence. From this direction it is evident that after insertion of Section 11-A the Tribunal has been vested with vide powers to re-appreciate the evidence recorded in a domestic inquiry and record its own conclusion about the misconduct of workman and punishment imposed on him.

11. Having carefully analysed the legal position, we are of the opinion that merely because the domestic inquiry was found to be fair and in accordance with the principles of natural justice, jurisdiction of Labour

Court to scan the findings recorded in the domestic inquiry on merits was not ousted.

REINSTATEMENT AND BACK WAGES

12. It is contended by learned counsel for the employer that the factory was permanently closed since September 11, 1997. A statement thereafter arrived at between the Union and the Company during conciliation which has been approved by AAIFR. According to the settlement, even the employees working in the company on cut-off date i.e. September 11, 1997 will cease to be employees and then will be no financial claim and liability for subsequent period. Hence there is no possibility of reinstatement. Copy of Tripartite Agreement was placed for our perusal.

13. As noticed earlier learned Single Judge, in the impugned judgment, observed that departure from the normal rule of reinstatement and consequential benefits can be made in the cases where reinstatement is impossible or where industry is closed. Since subsequent event in relation to the closure of industry is brought to our notice, we are of the view that issue in regard to reinstatement and back wages is required to be decided afresh by the learned Single Judge.

CONCLUSION:

14. Resultantly we dispose of this appeal in the following terms:-

(i) Finding of learned Single Judge that removal of respondent workman was illegal and unjustified, is confirmed.

(ii) In view of closure of industry in 1997 and subsequent Tripartite Agreement, the observations made in the impugned

judgment in regard to reinstatement and back wages are set aside and the matter is remitted back to learned Single Judge with the request to expeditiously decide this issue afresh. The employer shall file Tripartite Agreement along with the affidavit of concerned person with advance copy to learned counsel for the workman, who shall be at liberty to file counter affidavit. The parties shall appear before learned Single Judge for seeking further directions in the matter on February 19, 2007. There shall be no order as to costs.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

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